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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 4984 of 2003
Date of decision: August 29, 2006

Bawa Singh --- Appellant

Versus

Lachhman Singh --- Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Padam Kumar Jain, Advocate for the appellant.

Mr. Rajbir Wasu, Advocate for the respondent.

JUDGMENT

This second appeal by defendant-appellant is directed against the judgment and decree dated 31.7.2003 of the first appellate court which upheld the decree 10.11.1999 of the trial court.

Plaintiff filed a suit for possession by way of specific performance of an agreement dated 31.3.1997 to sell the land in dispute for a consideration of Rs. 1,50,000/- after adjusting the amount of Rs. 94,000/- which had already been paid by him to the defendant as earnest money at the time of execution of the agreement. It was further prayed that if for any reason, decree for specific performance could not be passed in favour of the plaintiff, then as an alternative relief, a decree for recovery of Rs. 1,50,000/- (Rs. 94,000/- as earnest money and Rs. 56,000/- as damages) with interest may be passed. Suit was contested by the defendant who introduced a totally different version and categorically stated that the alleged agreement to sell was the result of fraud and misrepresentation.

Trial court on the rival pleadings of the parties struck various issues. On appreciation of evidence, suit was decreed with costs. The plaintiff was directed to deposit the balance sale consideration of Rs. 56,000/- within one month of the date of decree failing which, it was further ordered that the suit shall stand dismissed. The defendant was directed to

execute the sale deed within one month thereafter and in case he fails to do so, a liberty was given to the plaintiff to get the decree executed. The defendant did not succeed before the first appellate court and his appeal was dismissed.

I have heard learned counsel for the parties and gone through the record. Counsel for the appellant-defendant vehemently submitted that the findings recorded by the courts below are wrong as the evidence led on behalf of the defendant was not properly appreciated. On the other hand, learned counsel appearing on behalf of the respondent-plaintiff supported the findings recorded by both the courts below. A perusal of the trial court judgment shows which observed, "It is not understandable as to why the defendant would execute the agreement to sell in favour of the plaintiff if no amount was paid by the plaintiff." It was further observed, "the payment of earnest money of Rs. 94,000/- is duly proved from the testimony of PW-1 Gurmej Singh and PW-3 plaintiff Lachhman Singh. Further more Bawa Singh defendant is literate person and cannot be presumed to have signed document Ex. P-1 without reading it because admittedly the document was got scribed from the regular scribe in Tehsil complex." It was on the basis of such findings that the suit was decreed and the findings of the trial court were affirmed by the first appellant court. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. No illegality or perversity could be pointed out by the learned counsel for the appellant therein. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 29, 2006
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